Recd

P.R. No. 3146/05
Presented by Shri Sameer Behar
dated 13/12/05

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Single Bench

M.C.C. NO. 06 OF 2006

APPLICANT : M/s J. K. Agarwala, I-19 Civil Township (Formerly G.T. Lane, Near Raj Mahal Hotel), Rourkela 769011 (Orissa)

Versus

NON-APPLICANT : 1. South Eastern Central Railway (Formerly South Eastern Railway) Through its General Manager, Zonal Office, Bilaspur (CG)

2. The Chief Engineer (Construction), South Eastern Central Railway, Bilaspur (CG)

APPLICATION UNDER SECTION 11 (6) OF THE ARBITRATION AND CONCILIATION ACT 1996 FOR APPOINTMENT OF ARBITRARTOR

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

M.C.C. No. 6/2006

मामला क्रमांक ..... सन् 200

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14-8-2006 Mr. Sameer Behar, counsel for the applicant. Mr. P.S.Koshy, counsel for the non-applicants. Heard. The applicant has preferred this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (henceforth 'the Act') for appointment of an arbitrator with the averment that a dispute has arose between the parties as regards to contract agreement No.155/AKT-CPH/CPM/SER/94. As per the provisions of the contract agreement and general conditions of the contract of the railways, any dispute arising between the parties is to be referred to an arbitrator. Learned counsel for the applicant submits that a demand for appointment of an arbitrator was made vide the applicant's letter dated 7-10-2005 of Annexure A-4, which was replied to by the non-applicants on 20-10-2005 vide Annexure A-6, acknowledging the receipt of the demand and informing that the concerned department has been advised to look into the matter and do the needful, but nothing was done thereafter and, therefore, the dispute may be referred to a sole arbitrator for arbitration in accordance with law. Learned counsel for the non-applicants submits that the non-applicants, vide communication dated 24-1-2006, had already intimated to the applicant that the matter may be referred to the arbitrator named in the said communication as per the provisions of the general conditions of the contract agreement.	

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.C.C.No. 6/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard learned counsel for the parties.

It is not disputed that the applicant had entered into a contract agreement with non-applicant No.1 for the work named "Execution of earthwork in formation in bank with mechanical compaction and in cutting, protection works such as pitching, turfing, etc. with other allied works in connection with construction of 3rd Line between Akaltara and Champa Railway Stations". It is also not in dispute that the general conditions of contract and standard specifications of the South Eastern Railway were integral parts of the agreement between the parties and as per Clause 64 of the said general conditions of contract, in the event of any dispute or difference between the parties hereto shall be referred to arbitration as per procedure prescribed under Clause 64(1) of the said general conditions of contract. It is admitted by the non-applicants that a dispute arose between the parties and the applicant addressed a letter dated 7-10-2005 to the non-applicants demanding that the said dispute may be referred to arbitration and even after receipt of the above letter, no action, as contemplated in Clause 64 of the general conditions of contract, was taken by the non-applicants within the stipulated period. I have already recorded the submission of learned counsel for the non-applicants that they had intimated the applicant vide their communication dated 24-1-2006 that the matter may be referred to the arbitrator named in the said communication, however, since the non-applicants have failed to act in accordance with Section 11 of the Act, therefore, this Court is of the view that the case for appointment of arbitrator is made out.

P.I.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

M.C.C. No. 6/2006

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, at the time of hearing, it was submitted by learned counsel for both the parties that they have no objection if any honourable retired Judge of High Court is appointed as the sole arbitrator to adjudicate the disputes.

I hereby, therefore, appoint Hon'ble Mr. Justice K.L.Shrivastava, former Judge of High Court of Madhya Pradesh, C/o Mr. Arvind Kumar Shrivastava, District and Sessions Judge, Raigarh (Chhattisgarh).

The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

The Registry to intimate Hon'ble Mr. Justice K.L.Shrivastava, former Judge of High Court of Madhya Pradesh, C/o Mr. Arvind Kumar Shrivastava, District and Sessions Judge, Raigarh (Chhattisgarh) about his appointment as arbitrator and to send him all the papers along with address of the parties.

The parties are also directed to approach Hon'ble Mr. Justice K.L.Shrivastava on his above address and to submit papers and to take part in the arbitration proceeding.

Accordingly, the M.C.C. stands disposed of.

Certified copy as per rules.

Sd/-
Dhirendra Mishra
Judge

Gopal

P.T.O.

24.8.06 7-9-06